

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 28, 2004

**STATE OF TENNESSEE v. PATRICK POTTER**

**Appeal from the Circuit Court for Blount County**  
**Nos. C-11245, C-11405, C-11409     D. Kelly Thomas, Jr., Judge**

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**No. E2003-02778-CCA-R3-CD - Filed October 7, 2004**

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The defendant, Patrick Potter, appeals from the Blount County Circuit Court's revoking his probation that he received for his guilty pleas to rape, a Class B felony; reckless endangerment, a Class E felony; and setting fire to personal property or land, a Class E felony. Although the defendant acknowledges that he violated his probation, he contends that the trial court erred by ordering him to serve the remainder of his sentences in confinement. We affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed**

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Steve McEwen, Mountain City, Tennessee (on appeal), and Raymond Mack Garner, District Public Defender (at trial), for the appellant, Patrick Potter.

Paul G. Summers, Attorney General and Reporter; Michelle Chapman McIntire, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Robert L. Headrick, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

This case relates to the defendant's guilty pleas to rape, reckless endangerment, and setting fire to personal property or land. The record reflects that the defendant was charged in 1997 with rape of a child and that he pled guilty to rape in February 1999. Pursuant to the plea agreement, the trial court sentenced him as a Range I, standard offender to eight years to be served as six months in jail and the remainder on supervised probation. In April 1999, the defendant also pled guilty to reckless endangerment and setting fire to personal property or land and received two concurrent two-year sentences to be served as six months in jail and the remainder on supervised probation. On March 22, 2001, the defendant's probation supervisor filed a probation violation warrant, alleging that the defendant had violated the terms of his probation by being arrested for reckless driving and

public intoxication, violating his curfew, smoking marijuana, and being three months behind in paying probation fees. During a hearing, the defendant admitted to the violations, and the trial court ordered him to serve thirty days on consecutive weekends. Upon completing his weekend confinement, the defendant was to be released on probation. On October 24, 2001, the defendant's probation supervisor filed a second probation violation warrant, alleging that the defendant had failed to serve his weekends in jail, had tested positive for marijuana, had admitted smoking the drug recently, had failed to pay probation fees, and had missed sex offender treatment meetings. The defendant absconded and remained at large for almost two years.

At the probation revocation hearing, the then twenty-four-year-old defendant testified that his child rape charge resulted from his accepting a twelve-year-old girl's offer to give him oral sex in return for a cigarette. He said that he had never met the girl before and that he thought his eight-year sentence for rape was excessive given the circumstances of the crime. He said that although he was supposed to serve only six months in jail for the rape conviction, he actually served eight months. He acknowledged committing the violations alleged in the first probation violation warrant and agreeing to serve thirty days in jail. He said that while he was serving his weekends in confinement, he failed a drug test. He said that after failing the drug test, he got scared and fled because he was afraid his probation would be revoked. He said he was gone for about two years and did not contact his probation officer during that time. He said that he was not charged with any crimes while he was gone, that he came to Maryville in October 2003 to visit his mother, that he was stopped for speeding, and that he was arrested. He said he had been diagnosed with anxiety and depression but was in better control than he was two years ago. He said that he would like to participate in a community corrections program and that he thought he could live with his mother. He said he had a lot of employment experience and could work many different types of jobs. On cross-examination, the defendant testified that he had used illegal drugs since elementary school. He said that after he absconded, he spent some time in other states.

Marcus Miller, the defendant's probation supervisor, testified that he began supervising the defendant in October 1999. He said that until the defendant first violated probation, the defendant had been making efforts to comply with the conditions of probation and was performing satisfactorily. He said the defendant had struggled regularly with depression and had been prescribed mental health medications. He said that at some point, the defendant began losing control of his behavior and missing sex offender group meetings. He said the defendant disappeared for about two years and did not contact him during that time. He said he had heard rumors that the defendant was arrested in South Carolina but could not prove the arrest. He said the defendant's demeanor at the hearing was better than he had seen in a long time. He said the defendant's mother cared about the defendant, wanted to help the defendant, and was cooperative.

The trial court determined that the defendant had violated his probation. It noted that the defendant needed to attend sex offender treatment classes because the defendant "still believes that if a child offers sex to an adult it's ok to take it, and the adult has no obligation to show any restraint or try to correct the child's behavior." On that basis, the trial court determined that the defendant

had no chance at rehabilitation and ordered that he serve the remainder of his sentences in confinement.

The defendant appeals, claiming that the trial court erred by ordering him to serve his sentences in the Department of Correction. He argues that incarceration is inappropriate in this case because he has a history of mental illness, performed satisfactorily on probation before his first probation violation warrant, and did not commit any other crimes after he absconded. He notes that his underlying offenses were nonviolent and that he has no prior convictions for violent offenses. The state contends that the trial court properly ordered the defendant to serve the remainder of his sentences in confinement. We agree with the state.

A trial court may revoke probation upon finding by a preponderance of the evidence that the defendant has violated a condition of probation. T.C.A. §§ 40-35-310, -311(e). If the trial court revokes probation, it can “(1) order incarceration; (2) cause execution of the judgment as it was originally entered; or (3) extend the remaining probationary period for a period not to exceed two years.” State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999). The decision to revoke probation is within the sound discretion of the trial court, and its judgment will be reversed only upon a showing of an abuse of discretion, reflected in the record by an absence of substantial evidence to support the trial court’s findings. State v. Gregory, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997).

In this case, the defendant admitted violating several conditions of his probation. We do not believe he has demonstrated that the trial court abused its discretion by ordering him to serve the remainder of his sentences in incarceration. To the contrary, the trial court’s decision is supported by the fact that the defendant has violated probation before and fled when he realized that his probation supervisor would probably file a second probation violation warrant against him. The judgments of the trial court are affirmed.

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JOSEPH M. TIPTON, JUDGE